IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.621 OF 2003

Mohammed Arif Ibrahim
Kasmani & Ors. ...Petitioners.

V/s

1. Sabina D/o Ismail Tibbi
2. State of Maharashtra ...Respondents.

Mr. Amin H. Solkar for the petitioners.

Mr. J.V. Parmar for respondent No.1.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 25TH FEBRUARY, 2005

P.C.

1. Heard the learned counsel for the petitioners and the learned Counsel for respondent No.1.

2. Petitioners have filed this petition under section 482 of the Code of Criminal Procedure and also under Articles 226 and 227 of the Constitution of India. The main relief prayed in this petition is quashing the complaint filed by respondent No.1 - wife under section 498A of the Indian Penal Code.

3. After the complaint was filed, after some time, the matter was amicably settled between the parties and the Consent Terms have been filed in the Trial Court in which the wife has on affidavit stated that

she does not wish to continue to prosecute the husband under section 498A. The Trial Court, however, rejected the application for discharge on the ground that section 498A being a noncompoundable offence, the Magistrate has no authority to dismiss the complaint.

Petitioner has, therefore, approached this Court.

4. Petitioners and respondent No.1 have jointly submitted that the parties have settled the matter and the matrimonial dispute which was pending in the Family Court has also been settled and an undertaking has been given by the wife that she would have no objection if the criminal complaint is dismissed and/or withdrawn.

5. Though it is true that noncompoundable offence cannot be compounded even with the leave of the Court, in view of the recent judgment of the Supreme Court, the inherent power of the High Court under section 482 of the Cr.P.C. is not limited or restricted by virtue of the provisions of section 320. The Apex Court in the case of B.S. Joshi and Ors. V. State of Haryana and Anr. reported in JT 2003 (3) SC 277 has observed in para 15 as under:-

"15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code."

The ratio of the said judgment squarely applies to the facts of the present case. I am satisfied that the parties have amicably settled the dispute and the complaint, therefore, is quashed and set aside. Needless to state that process issued on the basis of the complaint is also quashed.

6. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.